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In the

Supreme Court of the United States

OCTOBER TERM 1982

BETTY SANDER HARVEY,

Petitioner

vs

ROBERT E. BARD,

Respondent

BETTY SANDER HARVEY,

Petitioner

vs

ROBERT E. BARD & BATES, DEPREE, BARD AND WILSON,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT

BETTY SANDER HARVEY
834 Monroe Avenue
River Forest, Illinois 60305
Petitioner Pro se

The Scheffer Press, Inc.—(312) 263-6850

QUESTIONS PRESENTED FOR REVIEW

1. Which Court has the final responsibility, not in theory, but in substance and practice to preserve and enforce Petitioner's Rights to Trial by Jury as provided for under USCA Amendment VII and the mandatory obligation to review all proceedings in which breach of such Rights is alleged?

   A. Must this Court accept the Appellate Court's bizarre upholding of the Judgment NOV entered against Petitioner by the Trial Court, and upholding of the unfounded dismissal of Petitioner's Complaint 80L 14172 by res judicata based on such Judgment NOV which actions of the Courts denied Petitioner her Constitutional Rights under USCA Amendment 7?

   B. Can the Illinois courts arbitrarily, without authority in law, dismiss Petitioner's Complaint filed for jury hearing when disputed questions of fact exist . . . and can the Courts reexamine facts determined by the jury and reverse verdict of the jury without setting forth wherein jury erred or what evidence supported the judgment NOV? Are such acts by the courts violative of USCA Amendment 7?

   C. Is Illinois Rev. Stat. (1980) Ch. 110 sec. 68.1 which provides for judgment non obstante verdicto repugnant to United States Constitution Amendment 7 without safeguards which prevent arbitrary application as in Petitioner's case?

II. Which Court has the final responsibility not in theory, but in substance and practice to preserve and enforce Ptitioner's Right to Due Process and Equal Protection of the Law provided for under USCA Amendment XIV and the mandatory obligation to review all proceedings in which breach of such Rights is alleged?

A. Can the Illinois Courts deny Petitioner her rights to due process and equal protection of the law provided for under USCA Amendment 14 by refusing to grant petition for change of venue, disqualification, or transfer, when such petitions were supported by affidavit alleging prejudice?

B. Were the judgments and orders entered against Petitioner so lacking of rational substantiation in law as to render disposal of her causes of actions violative of due process where the trial court arbitrarily usurped the province of the jury and entered a non-specific judgment NOV in the first case, which judgment was upheld in the Appellate Court so that the same justices who upheld it, could then use such judgment to uphold the trial court's wrongful dismissal of the second cause of action on the basis of res judicata of the first case . . . when in fact no final judgment exists in such case to this very day?

III. Can the Circuit Court of Illinois, evade and pass the question of the Breach of Petitioner's Civil Rights to the Appellate Court with no ruling being made . . . and the Illinois Appellate Court pass the question to the Supreme Court of the State of Illinois without addressing the issue or making ruling thereon . . . and the Supreme Court of Illinois refuse to grant Petition for Appeal . . . leaving the only avenue for review the United States Supreme Court . . . which Court grants very few petitions for Certiorari. . . .? If this Court fails to grant Certiorari, where can Petitioner turn for protection of her Constitutional Rights?

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PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT

Petitioner, Betty Sander Harvey, respectfully prays that the Writ of Certiorari be issued in the above entitled causes, which are closely allied, to review the opinions and judgments of the Appellate Court of Illinois, First District, affirming judgment NOV for plaintiff Bard in the matter of *Bard* v *Harvey*, and order entered by the Illinois Supreme Court denying Peti-

tioner's Petition for Leave to Appeal . . . as well as to review the order entered by the Appellate Court of Illinois, First District affirming dismissal of Petitioner's complaint in the matter of *Harvey* v *Bard, et al,* and the order entered by the Supreme Court of Illinois denying Harvey's Petition for Leave to File Appeal instanter in such case.

JUDGMENT AND OPINION BELOW

On April 20, 1982 the Appellate Court of Illinois First District entered its order* affirming judgment NOV in favor of defendant, in the matter of *Bard* v *Harvey* 77 Ml 109422. (Copy of the order App. A) A timely Petition for Leave to Appeal to the Illinois Supreme Court was denied October 5, 1982. (App. B)

On June 15, 1982 the Appellate Court of Illinois entered its order* affirming dismissal of Harvey's Complaint No. 80L 14172, *Harvey* v *Bard et al.,* (App. C). Petition for Leave to Appeal to the Illinois Supreme Court was denied on September 2, 1982. (App. D).

JURISDICTION OF THIS COURT

The judgments sought to be reviewed (the Illinois Supreme Court's denial of the Petitions for Leave to Appeal) were entered on September 2, 1982 and October 5, 1982. This Petition for Certiorari is filed within 90 days from said denials. Jurisdiction of this Court is invoked under title 28, U.S. Code Sec. 2106 and 28 U.S. Code Sec. 1257(3).

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* The Illinois Appellate Court disposed of each case by unpublished order per Ill. Sp. Ct. Rules, Rule 23.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Seventh Amendment to the United States Constitution provides in entirety:

> "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "No state shall make or endorse a law which shall abridge the privileged or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction, the equal protection of the laws.

Ill. Rev. Stat. (*1980*) *Ch. 110, Sec. 48.3* In Motion to Dismiss . . .

> . . . If a material and genuine disputed question of fact is raised, the court . . . shall so deny such Motion, if the action is one in which a party is entitled to a trial by jury and a jury demand has been filed by the opposite party in apt time.

Ill. Rev. Stat. (*1975*) *Ch. 146, Sec. 1, 3,* states as follows:

> Every application for change of venue by a party shall be by petition, setting forth the cause of the application and praying for a change of venue which petition shall be verified by the affidavit of the applicant. . . . A petition for change of venue shall not be granted unless it is presented before trial begins, and before the judge to whom it is presented has ruled on any substantial issue in the

case, provided that if any grounds for such change of venue occurs thereafter, a petition for change of venue may be presented based on such grounds.

RAISING THE FEDERAL QUESTIONS BELOW

In *Bard* v *Harvey*, 77 Ml 109422 Petitioner challenged the sufficiency and propriety of Bard's Motion for rehearing and Judgment NOV in the Trial Court as being contrary to USCA Amendment 7, setting forth question in her Answer and Objections to such Motion and in oral argument on said Motion, that the Court applied one standard of justice for Petitioner and a different one for Bard, contrary to USCA Amendment 14, and that there could be no determination of the questions Bard raised in Petition for Judgment NOV because such questions were for jury. The Trial Court made no ruling on the Federal questions (App. A.) The Trial Court's failure to protect and uphold Petitioner's Constitutional Rights was raised in Appellate Court in Petitioner's Brief p 3 and fully argued pp 85-91. The Appellate Court failed to address the Constitutional Rights Question. The Appellate Court's failure to protect Harvey's Constitutional Rights under USCA Amendments 7-14 was raised in Illinois Supreme Court Petition for Appeal p. 2,3 and fully argued pp. 9-28. The Supreme Court denied Petition without ruling on Constitutional issue.

In *Harvey* v *Bard*, 80 L 14172 Petitioner challenged the sufficiency of Defendants' defense of res judicata in the Trial Court, as being contrary to due process since no final judgment existed in the original case. The issue of a fair hearing before an impartial tribunal was raised by Petitioner's Motion for Change of venue, which the trial court denied (App. G.) The Trial court

made no ruling on the Constitutional Rights issue. The issue of the Trial Court's failure to protect Petitioner's Federal Constitutional Rights was raised in Appellate Court in Harvey's Brief pp. 6, 7, 8 and fully argued at pp. 35-50. Appellate Court failed to rule on such issues (App. C.) The issue of the Trial and Appellate Court's failure to protect Petitioner's Constitutional Rights was raised in Petition to Appeal to the Illinois Supreme Court pp. 2, 3 fully argued at pp. 15-43, as well as in her Motion for change of Venue, disqualification of the Justices of the Supreme Court and transfer of the case, which was denied by the Ill. Supreme Court (App. D.) without addressing the Federal Question.

STATEMENT OF THE CASES

This petition for Certiorari involves two separate but closely related lawsuits. In both instances petitioner acted pro se, not by choice, but necessity since she has been unable to locate a lawyer willing to prosecute another lawyer. In each instance she filed timely jury demands. In each case the court disposed of case by directed verdict, not in keeping with the United States Constitution or the law. In each case on Appeal, Petitioner raised the question of the breach of her rights under USCA Amendments 7, 14, and in each case the Appellate Court failed to rule on the Federal questions. And, the Illinois Supreme Court denied Petition for Leave to Appeal, in each.

In the first case, *Bard* v *Harvey,* 77 Ml 109422, Petitioner, Betty Sander Harvey was sued by attorney Bard, respondent, in a single page, non-specific Complaint, (C-3), alleging only that Bard was employed to perform unidentified legal services, that he performed same, that

Petitioner owed him $925. Petitioner's reply (C-7), filed with Jury demand, (C-6), set forth the specific services Bard agreed to perform and his failure to do so . . . raising disputed questions of fact. Further pleadings raised further disputed questions. Bard was awarded Summary Judgment (C-20).

On Appeal the Court reversed and remanded for reason that disputed questions of fact exist which are for jury (App. E). After trial, the jury decided such facts and entered verdict for Petitioner. Bard then moved for rehearing, and obtained judgment NOV (C-31) App. H, the Court not specifying wherein jury erred. Petitioner again appealed urging that the trial court's judgment NOV deprived her of her rights under USCA Amendments 7 and 14. The Appellate Court reversed the judgment NOV and remanded once more stating that disputed questions of fact exist which are for the Jury (App. F) that jury verdict will not be disturbed. Bard then filed for rehearing in Appellate Court and the same justices who twice, in written opinions, determined that disputed questions of fact exist in this case, which questions are for jury, reversed themselves and entered an order upholding judgment NOV. (App. A)

Meanwhile, Petitioner filed *Harvey* v *Bard* No. 80 L 14172 . . . the second suit herein, a 7 count legal malpractice complaint alleging two counts of wilfull and wanton misconduct as well as 5 for breach of specific covenants of Bard's contract, with jury demand (C2-C17).

Bard filed Motion to Dismiss (C135-C140) waiting to do so until judgment NOV was granted in the first case.

His defense was res judicata, collateral estoppel and merger by judgment. Petitioner's reply and subsequent pleadings, supported by Affidavit, raised disputed questions of fact. (C434, C437, C416, C419)

The matter was assigned to Judge Paul Elward before whom Petitioner had appeared in other closely related matters. Elward's prejudicial behavior against Petitioner in such cases, made her fear that she would not obtain a fair hearing before him.

Petitioner filed Motion for Change of Venue (App. 6) or Disqualification supported by Affidavit of prejudice, which was denied by Elward, instanter (App. G).

Despite fact that Harvey had an Appeal pending in the first case, (wherefore no final judgment existed) and fact that disputed questions of fact existed, Elward dismissed the 7 Count complaint with prejudice, the order stating no reason. On Appeal, Petitioner urged inter alia that the court's actions in denying her Motion for Change of Venue deprived her of her Constitutional Right to Due Process by requiring her to have her cause heard before a Prejudiced court, as well as denying her constitutional Right to Trial by Jury, USCA Amendments 7 and 14. Further, petitioner urged that all actions taken by the Court after denying petition for change were void, including dismissal.

On June 15, 1981 the Appellate court disregarded the Federal questions and upheld dismissal of Petitioner's Complaint as barred by res judicata of the first suit. (App. C)

Again, the court erred as no final judgment exists in such suit, the matter being herein on appeal.

The Court's have thereby denied Petitioner equal protection of the law.

Petitioner filed petition for Leave to Appeal to the Ill. Supreme Court.

Because she had filed three previous Petitions for Leave to Appeal to the Illinois Supreme Court, pleading for review based on breach of her Constitutional Rights, none of which was granted, Petitioner feared the Court's disdain for her Civil Rights would preclude a fair and impartial hearing if her case was heard before said Court, wherefore she filed a Motion for Change of Venue, Disqualification of the Justices of the Illinois Supreme Court and transfer of the case to Federal Court. Such Petition was denied (App. D) in the same order denying her Motion for Leave to Appeal Instanter.

REASONS FOR GRANTING THE WRIT

I.

THE DUTY OF THE STATE COURTS TO PROTECT PETITIONER'S RIGHT TO JURY TRIAL PROVIDED FOR UNDER USCA AMENDMENT 7, HAS BEEN SHIRKED AND IGNORED BY THE TRIAL COURT, THE APPELLATE COURT AND THE ILLINOIS SUPREME COURT. THE COURTS HAVE IN FACT THEMSELVES BREACHED AND DENIED PETITIONER SUCH CONSTITUTIONAL RIGHT, INSTEAD OF PROTECTING SAME.

A. This Court need not accept the Appellate Court's bizarre upholding of the Judgment NOV granted to Bard by the trial Court, nor the unfounded Dismissal of Petitioner's Complaint 80 L 14172 by res judicata based on the upholding of that judgment NOV, but can and should make its own judgment on such matters since said matters denied Petitioner her Constitutional Rights under USCA Amendment 7.

B. Since the United States Constitution USCA Amendment 7 states that in suits at common law where value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States than according to the rules of the common law, the Illinois courts cannot arbitrarily dispose of a Complaint filed for jury hearing when disputed questions of fact exist, nor can the Illinois Courts reexamine facts determined by the jury, and reverse the verdict of the jury particularly when no new evidence or facts are presented. Yet in the in-

stant case, the Illinois Courts did both, thus breaching Petitioner's Rights under USCA Amendment 7.

C. Illinois Revised Stat. (1980) Ch. 110 sec. 68.1 which provides for judgment non obstante veredicto is repugnant to United States Constitution USCA Amendment 7 without safeguards which prevent arbitrary application, as in Petitioner's case.

Certiorari should be allowed to bridge the gap between United States Citizen's theoretical paper Rights provided for under USCA Amendment 7 and the non-existence of such Rights in actuality due to lack of a designated final authority mandated to enforce such rights, or the failure of any authority to do so.

The seventh Amendment to the Constitution of the United States provides for Jury Trial in all cases where controversy is over $20.00. The controversy in suit 77M1 109422 involved $925.00. Petitioner filed a timely Jury Demand and paid for jury hearing.

It is well settled that questions of fact are for the jury to decide . . . and that Summary Judgment cannot be entered when disputed facts exist. In *Fellheimer* v *Weis* (1942), 316 Ill. App. 449:

> **Summary Judgment cannot be used to impair right to jury trial.**

Yet the trial Court did, despite the fact that *Ill. Sup. Ct. Rules, Rule* 61 b-3 states: It is the duty of all judges to support the Federal Constitution, which principle was upheld in *Gross* v *State of Illinois,* 312 F 2d 257, 259 (1963) the court stating:

> **State Judges as well as Federal have responsibility to protect persons from violation of their Federal Constitutional Rights.**

But the Illinois Courts are blind to the above and have failed to protect Petitioner's Federal Constitutional Rights. There is no question that Petitioner was entitled to Jury Trial. On Appeal the Appellate Court acknowledged this, ruling on July 10, 1979 in *Bard* v *Harvey* (1979), 74 Ill. App. 3d 16, as follows (App. E):

> Defendant states pleadings and affidavits in instant case presented factual question of whether all terms of agreement were contained in letter dated August 13, 1976. . . . Defendant stated during initial interview Plaintiff orally agreed to *perfect appeal, in estate of Sander case, to amend Harris Bank case* to prepare *a defense in Mackay case.* . . . Letter agreement refers only to "*estate of Sander*" and then to "immeditae problem of your pending lawsuits" and "urgent court dates to meet" . . . Language pending lawsuits is ambiguous* because at the time letter was written defendant had at least two pending lawsuits, the *Harris Bank* case and *Mackay* case in addition to the *estate.* Also plaintiff did in fact research and prepare a brief in Harris Bank case, thus plaintiff's own actions indicate an oral understanding and there is a genuine issue of fact as whether letter agreement contained parties complete agreement. In Mackay case plaintiff stated he told her he could not handle case; however defendant stated in affidavit plaintiff agreed to prepare a defense. Thus an issue of fact is raised.
>
> Pleadings, affidavits and exhibits also present genuine issue of fact as to whether plaintiff performed services outlined in letter. In letter plaintiff stated he would interview certain persons, study files and make recommendations week of August 16, 1976.

---

* *Dixie Square Thom McAn, Inc.* v *Dixie Square Mangmt. Co., Inc.,* (1977) 55 Ill. App. 3d 619, 624. Extrinsic evidence must be considered.

> Defendant in affidavit stated plaintiff did not interview persons and did not make recommendations until September 15, 1976 at which time he terminated services. It has been held that whether a contract has been performed according to its terms is question of fact.

The court cited *George F. Mueller & Sons, Inc.* v *Northern Ill. Gas Co.* (1977), 32 Ill. App. 3d 249, 253 in which the court held:

> Whether a contract has been fulfilled according to its terms is a question of fact to be determined by jury.

The court then stated:

> We conclude that genuine issues of material fact were raised by pleading and affidavit and that the court erred in granting Summary Judgment. . . . Based on the foregoing we reverse and remand.

It is abundantly clear that disputed questions of fact existed and that such facts were for the jury to decide.

After a lengthy trial in which the court exhibited outrageous prejudice against Petitioner, the Jury decided the questions of fact and entered verdict for Petitioner.

Bard then filed Motion for rehearing and Judgment NOV which the court, with renewed determination to prevent Petitioner from having her controversy decided by the Jury in keeping with Amendment 7, granted the judgment NOV. (App. H)

The Court circumvented the normal procedures in granting such judgment, by failing to state wherein the jury erred or what evidence was offered to verify that the jury erred.

Knowing she could not determine the issues, raised in Motion for Judgment NOV since the issues were for the jury, the court entered a nebulous order . . . as non-specific as Bard's Complaint . . . stating:

> This is a case where parties contracted for services. Plaintiff (Bard) is suing for fees. He did do the work. The work was well done.

What services??? What work???

The jury had determined otherwise. Can the 14th Amendment tolerate "it's anyone's guess" lawsuits and judgments:

The court's written order, prepared *before hearing* states:

> After reviewing the testimony, exhibits and evidence at the trial, (the Court) found plaintiff proved his case by the preponderance of evidence and that no evidence of any probative value was offered by defendant. . . . Jury verdict was against the manifest weight of evidence and against preponderance of evidence. . . .

Yet the law is clear, the court had no authority to weigh evidence or determine where the preponderance lies.

> Upon motion for judgment NOV neither trial court or Court of review should weigh evidence nor determine where preponderance lies. *Hadden* v *Fifer,* 339 Ill. App. 289, *Whalen* v *Sidney Wanzer & Sons,* 343 Ill. App. 486, *Koehler* v *Wolverine Ins. Co.,* 49 Ill. App. 1061

The trial court simply disregarded the law, and usurped the province of the jury.

Petitioner appealed again . . . and again the Appellate Court on December 29, 1981 entered opinion in Petitioner's favor reversing and remanding the Judgment NOV

(App. F) repeating the Court's earlier finding in *Bard* v *Harvey* (1979), 74 Ill. App. 3d 16, stating:

> We conclude that there was a genuine issue of material fact as to whether letter agreement contained parties' complete agreement . . . and that the determination of the understanding between parties was a material issue of fact for the jury.

The court further stated:

> The evidence was lengthy and involved and ultimately turned on the credibility of the parties. *It is the function of the Jury to weigh contradictory evidence, judge credibility of witnesses and draw ultimate conclusions as to the facts. The Jury's determination will not be disturbed merely because a jury could have found differently or judges might find other conclusions.*" . .. citing *Kupcikevicius* v *Fitzgibbons* (1976), 41 Ill. App. 3d 405, *Mizowek* v *DeFranco* (1976), 64 Ill. 2d 303, 310.

The court concluded:

> We find . . . evidence does not so overwhelmingly favor plaintiff that jury's verdict was against manifest weight of evidence . . . accordingly judgment NOV is reversed and cause remanded for new trial.

However, Bard, knowing that the jury had already rejected his theory of the non-specific suit, did not wish to risk facing another jury, nor could he under USCA Amendment 14, and instead filed petition for rehearing.

Unbelievably, in a totally irrational act, the same Appellate Court who had twice determined that disputed questions of material fact exist in this case which are for jury . . . decided such questions arbitrarily, and on April 20, 1982 entered an order (App. A) withdrawing their Dec. 29, 1981 opinion (App. F) and upholding Judgment NOV! ! !

The court's action was as unsubstantiated in law as were Bard's previously ill-gotten summary judgment and judgment NOV. A simple reading of the order will show the paradox

The opening paragraph states: "Upon further scrutiny of the record and consideration of the evidence. . ." Yet in their second opinion (App. M) the court stated: "It is the function of the jury to weigh contradictory evidence, judge credibility of witnesses and draw ultimate conclusions of fact. . ." *Kupcikevicius* v *Fitzgibbons*; *Mizowek* v *DeFranco.*

The court also stated in second opinion (App. F) on Dec. 29, 1982 that "the evidence was lengthy and ultimately turned on the credibility of the parties" . . . . "it is the function of the jury to judge the credibility of the parties and draw ultimate conclusions as to the facts. . ." How then on April 20, 1982 can the court which has had no contact with the parties or witnesses, judge their credibility . . . the axis on which these justices alleged this case turned?

The answer is they could not . . . by law . . . but they did . . . The court's order is cleverly conceived to make one believe Bard fulfilled his contract. In such order p. 2 the court summarized the letter agreement, making only one reference to Bard's agreement to interview persons. The letter (C-11) has four references to same as follows:

> Par. 2. "I will have to spend a great deal of time . . . interviewing persons from whom pertinent information may be elicited."
>
> Par. 7. "I will need to know names of lawyers and others you will authorize me to interview."

Par. 7. "Please attach to signed copy of this letter . . . a list of persons I may contact . .

Par. 9. "Return this letter with list of persons I may contact as noted above.

It clearly was provision of contract and fulfillment, a disputed fact as acknowledged in the Court's opinion (App. E).

During trial, petitioner offered in evidence her letter dated Aug. 13, 1976 directed to Bard (DEF. X10, PX-3) which stated: (Report of Proceedings C105, 106):

> Enclosed are the following. . . . List of Persons to call:
>
> a. Robert Sander Fo9-7466
> b. Marion and John Winkelmann Fo 9-7899
> c. John Bormann Fi 4-0714
> d. Ray Hupfauer Fl 3-5821.

Petitioner, examined Bard regarding this list as follows:

> Report of Proceedings (106-107):
> Harvey: Did you call Robert Sander?
> Bard: No.
> Harvey: Did you call Marion and John Winkelman?
> Bard: No.
> Harvey: Did you call John Bormann?
> Bard: No.
> Harvey: Did you call Ray Hupfauer?
> Bard: No.
>
> Report of Proceedings (103):
>
> Harvey: Would we have discussed that you wanted people to interview?
> Bard: Yes.

Under cross examination by his own attorney Minor Wilson, Bard also acknowledged his failure to fulfill his contract in this regard.

Report of Proceedings (327):

> Wilson: Mrs. Harvey gave you names of four people she thought you ought to interview. Did you interview those four people?
>
> Bard: No.

Petitioner had planned to call each of the surviving persons on list to testify to Bard's failure to interview them but the Court, in pre-trial proceedings, told Petitioner she could not since Bard had already acknowledged he had not interviewed them in his letter dated Oct. 18, 1976, directed to Harvey (PX 14.)

Bard's failure to do research is also fully set forth in Report of Proceedings pp. 100, 168, 190-193, 205-231, supported by P.X 1-A.

The Appellate court was fully aware of these terms of contract and Bard's failure to fulfill same as they were comprehensively addressed in Petitioner's Appellate Brief, pp. 28, 29, 57, 58.

Yet in its order of April 20, 1982 (App. A) the court disregards all of the above and states at p. 8:

> We conclude the evidence established plaintiff performed service he agreed to do, i.e. that he examined defendant's files, researched legal issues and took other steps [UNSPECIFIED] he deemed necessary to form an opinion . . . Judgment of Circuit Court (Judgment NOV) is affirmed.

The Appellate court not only reexamined the facts determined by the jury, and decided the disputed questions of material fact which they had twice determined

were for jury, but they disregarded and distorted the evidence which clearly shows Bard failed to fulfill his contract.

USCA Amendment 7 provides that no facts determined by a jury can be otherwise reexamined by any court in the land.

The Appellate court has done just that, making a mockery out of Amendment 7 and 14 and petitioner's Constitutional Rights.

There was no rehearing . . . no new evidence or witnesses . . . only one circumstance changed. Petitioner's suit 80L 14172 was on Appeal before these same justices.

Petitioner was also denied her Constitutional Right to Trial by Jury in suit No. 80L 14172, by the Circuit Court which wrongfully granted Bard's Motion to Dismiss when disputed questions of material fact exist, contrary to *Ill. Rev. Stat. Ch. 110 Sec 48(3)*, and by the Appellate Court which upheld dismissal. *In Wegener* v *Anna* (1973) 591 Ill. App. 3d 316, 319 the court held that Right to Trial by jury is a constitutional Right. Dismissal is not available by discretion. Certiorari must be granted to close the gap between our Constitutional Right to Trial by jury, and the lack of such right through the Court's failure to uphold it.

II.

THE DUTY OF THE STATE COURTS TO PROTECT PETITIONER'S RIGHT TO DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW PROVIDED FOR UNDER USCA AMENDMENT 14, HAS BEEN SHIRKED AND IGNORED BY THE CIRCUIT COURT, THE APPELLATE COURT AND THE ILLINOIS SUPREME COURT. SUCH COURTS HAVE IN FACT THEMSELVES BREACHED AND DENIED PETITIONER SUCH CONSTITUTIONAL RIGHTS INSTEAD OF PROTECTING SAME.

A. This court must not tolerate the Circuit Court's denial of Petitioner's Motion for Change of Venue, Disqualification of Judges or transfer, nor the Illinois Supreme Court's denial of such Motions when such Motions were supported by Affidavit alleging prejudice.

B. The judgments and orders entered against Petitioner were so lacking of rational substantiation in law as to render disposal of her causes of actions violative of due process where the trial court arbitrarily usurped the function of the jury and entered a non-specific judgment NOV in the first case, which judgment was upheld in the Appellate Court so that the same justices who upheld it, could then use such judgment to uphold Trial Court's wrongful dismissal of the second cause of action on the basis of res judicata of the first case . . . . when in fact no final judgment exists in such case to this very day.

USCA Amendment 14 provides that no state . . . shall deny to any person within its jurisdiction, the equal protection of the law, nor deprive any person of their property without due process of law. And it is well settled that hearing before a fair and impartial tribunal is essential for Due Process. *U.S.* v. *Scuito,* 531 F2d 842, 845.

In order to assure parties a fair trial, the law has provided for a change of Venue where any party fears that he will not obtain a fair and impartial hearing because of the prejudice of the court. Ill. Rev. Stat (1975) Ch. 146 §§1, 3.

However, the court denied Petitioner her Constitutional Right under Amendment 14.

After jury entered verdict in her favor in the matter of *Bard* v *Harvey*, Ml 109422, which we have hereinbefore addressed, Petitioner filed suit No. 80L 14172 *Harvey* v *Bard et al* (C2-C17) with Jury demand.

The case was assigned to Judge Paul Elward, before whom Petitioner had appeared in several previous actions. At such times Elward had repeatedly exhibited hostile, prejudicial behavior toward Petitioner.

Fearing she could not receive a fair hearing before said judge, petitioner filed Motion to transfer (C448) which the court denied (C451).

Petitioner then filed Motion for Change of Venue (C480) with supporting affidavit (C481, C482) and exhibits (C483-C503). Said Motion was denied instanter (App. G) despite the fact that it is well settled in Illinois law that: The right to one change of venue is absolute. *Rosewood* v *Transamerica Ins.* (1974) 57 Ill. 2d 247, 250, 251; *Ferde* v *McDaniels*, 37 Ill. App. 3d 1029, 1053.

The Circuit Court's denial of change not only was contrary to Illinois law, but it flew in the face of the 14th Amendment. In *Re Murchisen* 75 Sp. Ct. 623, 625 this court held:

> A fair trial in a fair tribunal is basic requirement of due process . . . it necessarily follows that Motions

> for change of venue to escape a biased tribunal raise Constitutional issues both relevant and essential.

(C.F. Irvin v Dowd 81 Sp Ct. 1639, 1642) And in *U.S.* v *Scuito,* 531 F 2d 842, 845 the court held:

> Right to tribunal free from bias and prejudice is not based on statute governing disqualification of judge for prejudice, but on Due Process of U.S. Constitution.

In *Stahl* v *Board of Supervisors,* 11 ALR 185 held:

> The Constitution guarantees recognize as a primal necessity that there be laws providing impartial tribunals for adjudication of rights.

(see 3 Willoughby, Constitution of the USA 2d E. Sec. 1124; 12 Am Jur Constitutional Law Sec. 635.)

After denying Petitioner's Motion for a change of Venue, the Court dismissed Petitioner's Complaint No. 80L 14172.

On Appeal Petitioner raised the issue that the court's failure to grant her Motion for Change of Venue breached her Constitutional Rights under Amendment 14 (and 7) and that it was the duty of the Appellate Court to set aside any order entered after denial of Motion for Change of Venue, since it is well settled:

> That where a Petition for Change of Venue is improperly denied, all proceedings including order of Dismissal entered by the Trial Court subsequent to denial of Petition for Change, were void.

Johnson v *United Motor Coach* (1966) 66 Ill. App. 2d 295-301; *Ferde* v *McDaniels* (1976) 37 Ill. App. 3d, 1053, 1055; *Palvis* v *Jewel Tea* (1977) 53 Ill. App. 3d 287,

288, 289; *Wheaton Nat. Bank* v *Aarvold* (1973) Ill. App. 3d 193, 195. *Little* v *Newell* (1973) 14 Ill. App. 3d 564, 568.

Judge Elward's disregard for the 14th Amendment is well known to the Appellate Court. Both *Palvis* v *Jewel Tea, and Ferde* v *McDaniels* were cases in which Elward refused to grant Motion for Change. In each instance, the Appellate court reversed and remanded.

Yet, in Petitioner's case, the Appellate Court not only condoned the Circuit Court's breach of Petitioner's Constitutional Rights but further breached such rights, failing to uphold the principle set forth in *Landa* v *Siegel*, 68 ALR 1172 that:

> The Courts may not through judicial decrees or judgment violate the due process and equal protection clause.

But who is going to stop them?

To understand the manner in which the courts deprived Petitioner of her due process and equal protection one must examine the manner in which the Circuit Court disposed of her Complaint.

Defendants' filed Motion to Dismiss alleging res judicata, collateral estoppel and merger by judgment based on the ill-gotten judgment NOV in *Bard* v *Harvey*. (C135-C140).

Petitioner filed objections (C434-C437) supported by Affidavit (C416-C419) and exhibits (C420-C432) stating inter alia: that the matter was on appeal wherefore no final order exists citing *23a ILP Sec. 299* which states that an appeal which has effect of setting aside judgment of lower court prevents judgment from operating

as res judicata; that the elements essential to res judicata, Collateral Estoppel and Merger by Judgment were not present in these cases; that Judgment NOV was not in keeping with the Appellate opinion and breached Petitioner's Constitutional Rights; that disputed questions of material fact exist therefore pursuant to *Ill. Rev. Stat. (1980) Ch. 110 Sec. 48 (3)* Dismissal was not available: Yet, the Circuit Court defied all legal precepts and entered an order dismissing with prejudice (C 515), Complaint No. 80L 14172.

The order of dismissal gave no reason. On appeal, Petitioner raised the issue that she had been denied her Constitutional Rights under USCA Amendments 14 (and 7) because the trial court refused to grant her Motion for Change of Venue, and she was obliged to have her cause heard before a prejudiced tribunal.

No unbiased court would dismiss a complaint as barred by another Complaint when:

A. No final judgment existed in the original action, since the matter was on Appeal and *50 CJS Judgments* states: "A final judgment operates as res judicata and bar to relitigation of controversy and the cause of action litigated merges in the judgment only where the time to appeal has expired without appeal being taken.

B. The judgment was a Judgment NOV arrived at in a most depraved manner.

C. The elements necessary for the defense of collateral estoppel, merger by judgment and res judicata were not present:

   1. The subject matter was not identical

      a. 77M1 109422: issue was whether Bard was hired to perform non-specified legal services, whether Harvey breached her contract and owed Bard $925.00.

b. 80L 14172: issue is whether Bard wilfully and wantonly failed to Amend suit 76L 1829, wilfully and wantonly failed to perfect Notice of Appeal on final account in estate; whether Bard breached his contract: by failing to prosecute suit 76LM 205, by failing to perfect Notice of Appeal, by failing to give Harvey honest legal advice and opinion.

2. The thing to be recovered is not identical
   a. 77M1 109422: Bard sought to recover $925.00 legal fees.
   b. 80L 14172: Harvey sought recovery for losses sustained in estate, in the sum of $1,330,000 for each of 6 Counts and $1,256.73 in the 7th.
3. The cause of actions aren't identical.
   a. 77M1 109422: is breach of contract against Harvey.
   b. 80L 14172: is legal Malpractice against Bard, et al.

D. When Disputed Questions of Material Fact exist and *Ill. Rev. Stat.* (1980) ch. 110 Sec. 48(3) prohibits dismissal by Motion.

E. When there is no specific finding on any specific matter in 77M1 109422, as required by Illinois Law, as set forth in *Hoffman* v *Hoffman,* 300 Ill. 413, 418 (1938) which stated:

> To operate as estoppel by verdict it is absolutely essential that there shall have been a finding on a specific fact in former adjudication on record that was material and controlling in that case or was necessarily involved in the verdict of judgment and also controlling in the pending case and where there is no such specific finding and more than one distinct issue of fact was involved

> in former case, so as its uncertain upon which issue decision rested the estoppel will not be applied.

The pleadings in 77L 109422, as well as the Appellate Opinions verify that numerous issues of fact were in dispute. And the Trial Court's Judgment NOV order (AAP-H) clearly shows that there was no specific finding in such case. The Appellate Order disposing of case under Rule 23, (APPC) verifies that the subjects and issues determined by the court are not material and controlling in the pending case. The truth is the Municipal Court would not have jurisdiction over the issues in suit 80L 14172 and could not decide same. The Appellate Court in Petitioner's case failed to consider and abide by well settled principles of law and distorted the facts defending its upholding of the Circuit Court's dismissal by stating: (App. C)

> Despite plaintiff's argument that no final judgment exists in original suit filed by Bard, we note that this court recently affirmed the trial court's decision granting defendant Bard's motion for judgment N.O.V. Thus plaintiff's argument is without merit.

But it is the Court's argument which is without merit. Legal decisions cannot be predicated on what may happen in the future . . . not without breaching the 14th Amendment.

No final judgment existed in case no. 77M1 109422 when the Trial court entered its order dismissing suit No. 80L 14172, as the matter was on appeal. And no final judgment existed in 77M1 109422 when the Appellate Court entered its order affirming dismissal because the time for taking appeal had not expired with no appeal being taken. ***50 CJS Judgments. Sec. 620.*** And no final judgment will

exist until this court rules on this Petition. In *Thompson* v *Louisville,* 362 U.S. 199 (1960) the Court ruled that a conviction wholly devoid of evidentiary support violates due process.* Shouldn't this principle also equally apply to Civil judgments, particularly Judgment NOV? This is not the first instance wherein the Appellate Court of Illinois distorted the record and disregarded the facts. In the original cause of action from which both these cases arose, *Harvey* v *Harris,* 73 Ill. App. 3d, 280, the Appellate Court set forth more than 25 falsifications of facts in their opinions, to dispose of Harvey's case. The courts must not be allowed to enter orders predicated on falsification of facts and speculation on what may happen in the future.

Instead of basing its opinions on altered facts and crystal ball predictions which they transformed into self-fulfilling prophecy in this case by upholding the trial Court's wrongful entry of Judgment NOV in suit 77ML 109422, thus establishing a reason for the same justices upholding the trial court's wrongful dismissal of petitioner's Complaint No. 80L 14172 . . . the Appellate Court should have set aside such dismissal for reason that the Trial Court's failure to grant Petitioner's Motion for Change of Venue, denied Petitioner's Constitutional Rights provided for under USCA Amendment 14.

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* Both Judgment NOV (App. H) and the order upholding same (App. A) are wholly devoid of evidentiary support as is the order Dismissing Complaint 80L14172 and the order upholding same (App. C).

III.

THE ILLINOIS COURTS CANNOT BE ALLOWED TO EVADE AND PASS THE QUESTION OF THE COURT'S BREACH OF PETITIONER'S FEDERAL CONSTITUTIONAL RIGHTS UNDER AMENDMENTS 7, 14, FROM THE CIRCUIT COURT TO THE APPELLATE COURT, FROM THE APPELLATE COURT TO THE ILLINOIS SUPREME COURT, FROM THE ILLINOIS SUPREME COURT TO THE UNITED STATES SUPREME COURT . . . WITH NO ONE RULING ON THE FEDERAL QUESTION, AND IF THIS COURT REFUSES TO ADDRESS THE MATTER IN CERTIORARI, WHERE CAN PETITIONER FIND PROTECTION OF HER CONSTITUTIONAL RIGHTS?

This Petition is a plea for the United States Supreme Court to grant Certiorari and designate a final tribunal which must, by law, enforce Petitioner's Constitutional Rights. The Supreme Court Rules of the State of Illinois, and case law all establish that the Courts must not deprive citizens of their Constitutional Rights, and that it is the duty of all judges to support the Federal Constitution. *Ill. Sup. Court Rules, rule 6 1b(3) Gross* v *State of Ill. 312 Fd 2d 257, Landa* v *Siegel 68 ALR 1172.* But wherein does the recourse lie for Petitioner who has had her Rights stripped away by the Circuit and Appellate Courts? The judicial Review Board has no authority over improper rulings and official misconduct of judges. And the Illinois Supreme Court has chosen to wink at their brothers' unethical conduct. The Illinois courts have not only failed to uphold and protect Petitioner's Constitutional Rights, they have breached such Rights, failing to address the question of the Breach, passing the question from the Circuit Court to the Appellate Court, from there to the Illinois Supreme Court in an endless "Evers to Tinker to Chance" but with far less desirable results.

The Illinois Courts by their judicial judgments violate the due process and equal protection clause of USCA Amendment 14 with impunity . . . knowing that when they do so, the State Appellate Court will passively condone such violations, and the State Supreme Court in their posture of hear no evil, see no evil when done by the judicial system, will refuse to review cases alleging breach of Civil Rights. They feel secure in the knowledge that the Supreme Court of the United States cannot review all such cases. Petitioner, too, is well aware of the heavy burden this Court bears, but she earnestly believes the questions herein set forth are of such magnitude and so crucial to the well being and protection of each citizen of the United States that they must be determined by this Court which has been empowered with authority over all other Courts in the United States.

Certiorari should be allowed so that this Court may set forth explicitly which Court not only has the duty, but is required by law, to review all cases wherein Breach of Constitutional Rights is alleged.

CONCLUSION

For all of the reasons set forth, certiorari should be allowed: and, upon consideration of the substance of Petitioner's arguments, the judgment NOV in suit 77ML 109422 and the order Dismissing Complaint 80L 14172 by reason of res judicata of such judgment should be reversed as repugnant to the Fourteenth and Seventh Amendments of the United States Constitution.

Respectfully submitted,

Betty Sander Harvey
834 Monroe Street
River Forest, Illinois 60305
Petitioner Pro se

APPENDIX A

Second Division

April 20, 1982

80-2773

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROBERT E. BARD,

Plaintiff-Appellee,

v.

BETTY SANDER HARVEY,

Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable MARY E. HOOTON, *Judge Presiding.*

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

On plaintiff's petition for rehearing, defendant's answer and plaintiff's reply, and upon further scrutiny of the record and consideration of the evidence, the opinion filed in this cause on December 29, 1981 is withdrawn and the following order is issued in its place disposing of the appeal under Supreme Rule 23. Ill. Rev. Stat., 1981 Supp., ch. 110A, par. 23.

Defendant, Betty Sander Harvey, appeals the trial court's entry of judgment notwithstanding the verdict in favor of plaintiff, Robert E. Bard, in plaintiff's action to recover attorney's fees.[1] Defendant also appeals the trial court's conditional granting of a new trial in the event the judgment n.o.v. is rebersed.

[1] In an earlier appeal, the trial court's entry of summary judgment in favor of plaintiff was reversed and the cause was remanded for further proceedings. See *Bard* v. *Harvey* (1979), 74 Ill. App. 3d 16, 392 N.E. 2d 371.

The evidence reveals that on August 11, 1976 defendant consulted plaintiff about the estate of her father which was pending in probate and about two other matters: (1) a pending suit for legal fees brought against defendant in Du Page County by John R. Mackay, one of her previous attorneys; and (2) a pending suit filed by defendant against the Harris Trust and Savings Bank and the Continental Bank and Trust Company, in which both banks had filed motions to strike and dismiss on the ground that defendant's complaint was barred by the statute of limitations.

Defendant brought to her meeting with plaintiff at his office a substantial number of "rather bulky" files pertaining to the above-mentioned lawsuits and related matters. She left nine of the files with plaintiff for his review and evaluation. After an initial conference, plaintiff wrote a letter to defendant outlining his understanding of the terms of the agreement they had reached. This letter, dated August 13, 1976, provided in pertinent part:

> "As was apparent in our discussion and the files which you produced, this is a very complicated legal case with many facets. Several lawyers have represented you already in this matter, and for one reason or another their services have been terminated. It is obvious that any new counsel now coming into the picture, particularly after the lapse of so many years, will have to spend a great deal of time simply *reviewing the files, interviewing persons from whom pertinent information may be elicited, and doing some basic legal research.*
>
> *I propose to take these initial steps on your behalf at the rate of $50.00 per hour payable on a current basis.* I will bill you for such hours as are actually spent by me in such an orientation process. • • •
>
> *The main purpose of undertaking such an analysis will be to try to arrive at an objective legal position for you in this matter. In other words, what right, if any, can you assert, and what are the practical*

consideration[*s*] *attached thereto?* Any opinion on my part will require at least the preliminary orientation covered above.

You must understand that I cannot guarantee any favorable results on your behalf. For that matter, it may very well be that my recommendation to you would turn out to be entirely negative. Needless to say, my approach will be in the affirmative, but in view of the prolonged history of this matter, I get the distinct impression that the odds are against you.

Both of us reserve the right to terminate my services for you at any time with the understanding that should that occur, you will promptly pay for the time I have rendered up to that point of termination at the above quoted rate.

* * *

There is the immediate problem of your *pending lawsuits.* As I understand it, . . . there are some rather *urgent court dates* to meet. It may well be that one or all of these matters will have to be referred to other counsel and it is my intention to study your files over this weekend and contact you the first part of the week of August 16 with some recommendations.

If you are in accord with the above, please sign the carbon copy of this letter at the appropriate place indicated and return the copy to me. * * *" (Emphasis added.)

Defendant signed the copy on August 16, 1976 and returned it to plaintiff.

Plaintiff prepared a *pro se* brief to be filed by defendant in opposition to the motions to strike and dismiss in her pending cases against the Harris and Continental banks. Defendant then had a further conference with plaintiff on August 17, 1976 at which time he explained that he had prepared the brief as a *pro se* brief because he had not yet decided to enter his appearance as counsel

in any of defendant's cases. Defendant signed the brief, filed it and mailed copies to opposing counsel. Also on August 17, plaintiff returned the file in the case of *Mackay v. Harvey* and told defendant that he could not handle that case because it was filed in Du Page County where he did not practice. Plaintiff referred defendant to another attorney.

On September 15, 1976, in a "letter of opinion" to defendant, plaintiff stated that he had reviewed defendant's various legal problems and concluded that he could not "hold out much hope for [her]" on any of the matters she had brought to his attention. Plaintiff stated further that in accordance with their written agreement he was terminating his services on behalf of defendant and requested full payment for all services rendered to date, which amounted to $1,250. In a letter dated October 10, 1976 defendant replied, "Thank you for your letter of September 15. Although I was disappointed in the content I will abide with your conclusion that you no longer wish to be involved." Defendant enclosed a check for $150 on account. At the time she wrote this letter, defendant had already entered her appearance *pro se* in all three of her lawsuits.

Plaintiff, who received a total of $325 from defendant, filed an action to recover the balance of $925. In addition to the evidence summarized above, plaintiff also introduced expert testimony purporting to show that plaintiff's legal opinion as to the relative merits of defendant's lawsuits was correct and that his fees were reasonable.

Defendant's position at trial was that plaintiff had not performed the services as they had agreed and in fact had worked to her disadvantage. Her testimony will be discussed more fully below. The jury returned a verdict for defendant and, on plaintiff's motion, the trial court entered judgment notwithstanding the verdict in plaintiff's favor.

Defendant's initial contention is that the trial court erred in entering judgment notwithstanding the verdict. In *Pedrick* v. *Peoria & Eastern R.R. Co.* (1967), 37 Ill. 2d 494, 229 N.E.2d 504, the court held that "judgment n.o.v. [should be] entered only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on the evidence could ever stand." (*Pedrick*, at 510.) Defendant contends that this standard was not met in this cause.

At trial defendant testified that she "believe[d]" that plaintiff had agreed to represent her in several pending lawsuits and had agreed to file malpractice suits against attorneys previously retained by her. In support of this belief defendant cites her testimony that in a telephone conversation on August 12, 1976, "we had [a] thorough discussion on all matters pending in Court and actions he would take on my behalf." But defendant's answer continued, "His rate of compensation was discussed. And he [plaintiff] said he would set forth the conditions of this compensation in a letter of agreement." That letter expressly gave each party the right to terminate plaintiff's services at any time with the understanding that defendant would compensate plaintiff for his services at the stated rate of $50 per hour up to the point of termination. Defendant signed and returned the letter to plaintiff. While defendant also testified that she "believed it [the August 13 letter of agreement] was merely supplemental to representations that [plaintiff] orally made, in person and on the phone, in which he assured me he would take care of my urgent court matters and protect my interests in the pending legal actions," defendant's conduct subsequent to her signing the agreement casts doubt on the reasonableness of this belief.

After plaintiff notified defendant that he did not believe any of her lawsuits had merit and terminated his services, defendant sent him a letter in which she thanked him for his communication and agreed to "abide with

your conclusion that you no longer wish to be involved." Enclosed with the letter was a check for $150 on account.

With respect to defendant's testimony that plaintiff had agreed to file malpractice suits against her previous lawyers, it is apparent that once plaintiff concluded that in his opinion there was little or no merit in any of defendant's lawsuits, there would be no merit in his filing any malpractice claims against her former attorneys.

Defendant also infers from the fact that plaintiff prepared a brief for defendant to file *pro se* in the Harris bank matter that the parties may have had an oral understanding that plaintiff would represent defendant in her pending lawsuits. Plaintiff, however, stated that he had prepared the brief as a *pro se* brief to be filed by defendant herself because he had not yet decided to enter his appearance as counsel in any of defendant's cases.

Finally, the mere fact that defendant's previous attorney had withdrawn from defendant's three lawsuits did not indicate that plaintiff had agreed to represent defendant in those actions. Indeed, in the letter of agreement plaintiff advised defendant that "[t]he main purpose of undertaking * * * an analysis [of her cases] will be to try to arrive at an objective legal position for you in this matter. In other words, what right, if any, can you assert * * * ?" Plaintiff further advised defendant that:

> "There is the immediate problem of your pending lawsuits. As I understand it, there are some rather urgent court dates to meet. It may well be that one or all of these matters will have to be referred to other counsel and it is my intention to study your files over this weekend and contact you the first part of the week of August 16 with some recommendations."

Defendant's other affirmative defenses alleged, in effect, that plaintiff had been guilty of negligence and malfeasance. Defendant, however, failed to present the ex-

pert testimony required to support such allegations. See *Schmidt* v. *Hinshaw, Culbertson, Moelman, Hoban & Fuller* (1979), 75 Ill. App. 3d 516, 394 N.E.2d 559.

We conclude that the evidence in this case established that plaintiff performed the services which he agreed to do, *i.e.*, that he examined defendant's files, researched the legal issues involved and took other steps he deemed necessary to form an opinion regarding the validity of defendant's claims. Once plaintiff determined that in his opinion those claims had no validity, plaintiff terminated his relationship with defendant in accordance with their agreement and defendant accepted that termination in writing. Plaintiff presented expert testimony that his fees were fair and reasonable. Defendant failed to meet her burden of proof as to any of her affirmative defenses.

Upon our close review, we find that the evidence in this case, when viewed in its aspect most favorable to defendant, so overwhelmingly favors plaintiff that no contrary verdict could ever stand (*Pedrick.*) Accordingly, we hold that the trial court did not err in entering judgment notwithstanding the verdict in favor of plaintiff. This conclusion makes it unnecessary to reach defendant's argument that the court erred in conditionally granting a new trial.

For the foregoing reasons, the judgment of the circuit court is affirmed.

Dated at Chicago, Illinois, this 20th day of April 1982.

STAMOS, P.J. PERLIN and DOWNING, JJ.

APPENDIX B

ILLINOIS SUPREME COURT

October 5, 1982

Ms. Betty Sander Harvey, Pro Se
834 Monroe Ave.
River Forest, IL 60306

No. 56923 — Robert E. Bard, respondent, vs. Betty Sander Harvey, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today *DENIED* the petition for leave to appeal in the above entitled cause. Simon, J., took no part.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

APPENDIX C

Second Division

June 15, 1982

IN THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

BETTY SANDER HARVEY (a/k/a Davis),
Plaintiff-Appellant,

vs.

ROBERT E. BARD and
BATES, DEPREE, BARD and WILSON,
Defendants-Appellees.

Appeal from the Circuit Court of Cook County.
Honorable PAUL F. ELWARD, *Judge Presiding.*

81-781

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Plaintiff, Betty Sander Harvey, filed a *pro se* complaint against defendants, Robert Bard, an attorney, and his law firm for legal malplactice. Defendants subsequently filed a motion to dismiss the the complaint, claiming that the allegations were adjudicated at a prior trial and were *res judicata*. After a hearing, the trial court granted defendants' motion. Plaintiff now appeals *pro se* contending that the trial court erred in granting defendants' motion.

Plaintiff filed a lengthy complaint alleging in part that defendant Bard was negligent in that he failed to amend a complaint or perfect an appeal in a case involving the administration of her father's estate. Plaintiff further alleged that Bard breached his contract for employment entered into between the parties by failing to perfect an appeal or amend the complaint in the estate proceedings,

by failing to represent plaintiff in a legal malplactice action against her former attorney, and by failing to interview persons with valuable knowledge concerning the administration of her father's estate and to review documents and files.

Defendant Bard thereafter filed a motion to dismiss plaintiff's complaint claiming that the issues raised by plaintiff were previously adjudicated when Bard brought an action against plaintiff for attorney's fees. In the prior lawsuit filed by this defendant for fees, the trial court granted Bard's motion for summary judgment and allowed defendant to recover $925 in attorney's fees plus court costs. However, this court reversed the trial court's judgment and remanded the case for further proceedings after concluding that issues of material fact existed. *Bard* v. *Harvey* (1979), 74 Ill. App. 3d 16, 392 N.E.2d 371.

A jury trial was held in that case on May 27, 1980. At that time defendant presented evidence as to the reasonableness of his attorney's fees. Plaintiff appeared *pro se* at the trial and testified that defendant failed to properly handle her father's estate and failed to file a cause of action against the bank as executor and trustee of the estate, that defendant failed to represent her in her lawsuit against her former attorney, and that defendant failed to interview several witnesses and review certain documents at her request.

After hearing arguments by the parties, the jury returned a verdict in favor of plaintiff.[1] Defendant subsequently filed a motion for judgment notwithstanding the verdict, and this motion was granted by the trial court. The court stated in part as follows:

"The Court has listened to all of the arguments. The Court has reviewed its notes in the case and the

[1] Plaintiff apparently filed the present action following the jury verdict in her favor.

> Court states this is a case where the parties contracted for services.
>
> The Plaintiff [Bard] is suing for fees. He did do the work. The work was done well and the fees were fair and reasonable."

The decision of the trial court was recently affirmed by this court in a Rule 23 order. *Bard* v. *Harvey* (No. 80-2773 filed April 20, 1982).

Plaintiff initially contends that the trial court's judgment dismissing her suit against defendants for negligence and breach of contract is not *res judicata* since no final judgment exists in the original suit brought by defendant Bard. Plaintiff also contends that the trial court violated her constitutional right to a jury trial and that she was denied equal protection of the law because the trial court was allegedly prejudiced against her. Defendants basically maintain that plaintiff's action is barred since the issues raised in plaintiff's complaint were previously adjudicated at the earlier proceedings.

Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court competent jurisdiction operates as a bar to any subsequent litigation between the same parties or their privies on matters found to be part of the same cause of action before the same or different tribunal. (*Hilti Inc.* v. *Griffith* (1979), 68 Ill. App. 3d 528, 532, 386 N.E.2d 63.) The prniciple of *res judicata* extends not only to matters actually decided but to all matters which might have been presented and decided. *Consolidated Distilled Products* v. *Allphin* (1978), 73 Ill. 2d 19, 28, 382 N.E.2d 217.

We have reviewed the issues presented by the parties in their lengthy briefs and are of the opinion that plaintiff was barred from instituting the present action against defendants for malplactice and breach of contract. In *Howell* v. *Goodrich* (1873), 69 Ill. 556, our supreme court determined that a judgment entered in favor of the plaintiff-doctor for services rendered was a bar to a subse-

quent suit filed by defendant for malpractice against the doctor where the defendant appeared at the prior action and interposed the defense of malpractice. We believe the situation in *Howell* is analogous to the present case. Here, Bard initially brought an action against plaintiff to recover fees for services rendered. Plaintiff presented evidence at the trial that Bard was not entitled to recover his fees since he failed to adequately represent her. Plaintiff apparently attempts to distinguish *Howell* by relying on the supreme court decision in *Barton* v. *Southwick* (1913), 258 Ill. 515, 101 N.E. 928. In *Barton*, the court found that an action brought by a physician for services rendered did not bar a subsequent suit for malpractice since the plaintiff did not appear at the prior action and allege a malpractice defense. Here, unlike *Barton*, plaintiff appeared at the earlier suit and presented eivdence in her defense that defendant was negligent in the performance of his duties. In light of the decision reached in *Howell*, we conclude that plaintiff was barred from filing the present suit against defendants.

Furthermore, despite plaintiff's argument that no final judgment exists in the original suit filed by defendant Bard, we note that this court recently affirmed the trial court's decision granting defendant Bard's motion for judgment *n.o.v.* Thus, plaintiff's argument is without merit.

Accordingly, the judgment of the circuit court of Cook County is affrmed.

Dated at Chicago, Illinois, this 15th day of June, 1982.

Stamos, P.J., Downing and Perlin, JJ.

APPENDIX D

September 2, 1982

Ms. Betty Sander Harvey
834 Monroe Avenue
River Forest, IL 60305

In re: Betty Sander Harvey (a/k/a Davis), petitioner, vs. Robert E. Bard, et al., respondents. No. 57173

Dear Ms. Harvey:

This office has today received and filed an order entered by Justice William G. Clark denying your motion by petitioner, pro se, for leave to file petition for appeal as a matter of right instanter in the above entitled cause.

It was further ordered that the motions by petitioner, pro se, for leave to file a reply to respondent's objections, and to disqualify the Justices of the Supreme Court and transfer the case to the Federal District Court are also denied.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

JH:gn

cc—Atty. David Andich
Roan & Grossman
55 West Monroe St.
Chicago, IL 60602

P.S. Our docket indicates that the $25.00 statutory docket fee has not been paid. Please forward your remittance as soon as possible so that we may remove this charge from our records.

APPENDIX E

Pages 5, 6 of Appellate Opinion — in
78-792

ROBERT E. BARD,

Plaintiff-Appellee,

v.

BETTY SANDER HARVEY (a/k/a DAVIS),

Defendant-Appellant.

Appeal from Circuit Court of Cook County.
Honorable HAROLD N. NUDELMAN, *Presiding.*

Mr. Justice Perlin delivered the opinion of the court:

Defendant contends that the pleadings and affidavits in the instant case presented the factual issue of whether all of the terms of the parties' agreement were contained in the letter dated August 13, 1976. Defendant stated in an affidavit that during the initial interview plaintiff orally agreed to perfect the appeal in the *Estate of Sander* case, to amend the *Harris Bank* case, to prepare a defense in the *Mackey* case and to prepare malpractice actions against attorneys previously retained by defendant. The letter agreement specifically refers only to the *Estate of Sander* case and then refers to "the immediate problem of your pending lawsuits" and "some rather urgent court dates to meet." The language "pending lawsuits" and "urgent court dates" is not defined and is ambiguous because at the time the letter was written defendant had at least two pending lawsuits, the *Harris Bank* case and the *Mackey* case, in addition to the *Estate* case. Also, plaintiff did, in fact, research and prepare a brief in the *Harris Bank* case. Thus, plaintiff's own actions indicate that there may have been an oral understanding between the parties and that there is a genuine issue of fact as to whether the letter agreement contained the parties'

complete agreement. In reference to the *Mackey* case, plaintiff stated in a letter dated January 13, 1977 that he had told defendant he could not handle the case; however, defendant stated in her affidavit that plaintiff agreed to prepare a defense to the case. Thus, an issue of fact is raised.

The pleadings and affidavits and accompanying exhibits present also a genuine issue of fact as to whether plaintiff performed the services outlined in the letter agreement. In the letter plaintiff stated he would interview certain persons to obtain information, study the files and make a recommendation to defendant during the week of August 16, 1976. Defendant stated in her affidavit that plaintiff did not interview the persons as agreed and did not make any recommendations to her until September 15, 1976 at which time he terminated his services. It has been held that whether a contract has been performed according to its terms is a question of fact. *George F. Mueller & Sons, Inc.* v. *Northern Illinois Gas Co.* (1st Dist. 1975), 32 Ill. App.3d 249, 253, 336 N.E.2d 185.

We conclude that genuine issues of material fact were raised by the pleadings and affidavits and that the court erred in granting summary judgment for plaintiff.

Defendant also contends that she was denied a fair hearing because the judge displayed prejudice against her and failed to protect her constitutional rights. A reading of the record does not support defendant's allegations. Rather, the record indicates that the judge was patient with defendant and he allowed her an opportunity to present her case. Defendant contends that since she was appearing pro se, she should have been granted more leeway than is granted attorneys who appear before the court. It has been held in criminal cases that once a defendant chooses to waive counsel and represent himself, he is responsible for conducting his own defense (*People* v. *Richardson* (1959), 17 Ill.2d 253, 260, 161 N.E.2d 268) and he may not expect favored treatment even though

the result may be that he is less effective as his own attorney (*People* v. *Tuczynski* (1st Dist. 1978), 62 Ill. App. 3d 644, 650, 378 N.E.2d 1200). This same principle should apply in civil cases.

Based on the foregoing we reverse the order of the circuit court of Cook County and remand the cause for further proceedings not inconsistent with this opinion.

Reversed and remanded.

Stamos, P.J., and Downing, J., concur.

APPENDIX F

Page 5 and 6 of Appellate Court Opinion

December 29, 1981

80-27773

BETTY SANDER HARVEY,

Defendant-Appellant,

v.

ROBERT E. BARD,

Plaintiff-Appellee.

Appeal from Circuit Court of Cook County.
Honorable MARY H. HOOTON, *Presiding.*

JUSTICE PERLIN delivered the opinion of the court:

In our earlier opinion, predicated on the trial court's granting of summary judgment, we noted that where the language of a contract is ambiguous, extrinsic evidence, including prior negotiations between the parties, any oral understandings, and the parties' conduct, is admissible to determine the parties' intentions. (See *Dixie Square Thom McAn, Inc.* v. *Dixie Square Management Co., Inc.*, (1977), 55 Ill. App.3d 619, 370 N.E.2d 1256.) The letter agreement in the instant case refers to "the immediate problem of your pending lawsuits' and "some rather urgent court dates." This language is not defined and is ambiguous because at the time the letter was written defendant had at least two pending lawsuits. We concluded that there was a genuine issue of material fact as to whether the letter agreement contained the parties' complete agreement.

The determination of the understanding between the parties was a material issue of fact for the jury. The evidence was lengthy and involved and ultimately turned on the credibility of the parties. It is the function of the jury to weigh contradictory evidence, judge the credibility

of the witnesses and draw ultimate conclusions as to the facts. The jury's determination will not be disturbed merely because a jury could have found differently or judges might find other conclusions to be more reasonable. *Kupcikevicius* v. *Fitzgibbons* (1976), 41 Ill. App.3d 405, 354 N.E.2d 434; see also *Mizowek* v. *De Franco* (1976), 64 Ill.2d 303, 310, 356 N.E.2d 32.

We find that under the rule of the *Pedrick* case, when the evidence in the case at bar is viewed in its aspect most favorable to defendant, it does not so overwhelmingly favor plaintiff that the jury's verdict in defendant's favor could not stand. We hold, therefore, that the trial court erred in entering judgment n.o.v. stated he would interview certain persons to obtain information, study the files and make a recommendation to defendant during the week of August 16, 1976. Defendant stated in her affidavit that plaintiff did not interview the persons as agreed and did not make any recommendations to her until September 15, 1976 at which time he terminated his services. It has been held that whether a contract has been performed according to its terms is a question of fact. *George F. Mueller & Sons, Inc.* v. *Northern Illinois Gas Co.* (1st Dist. 1975), 32 Ill. App.3d 249, 253, 336 N.E.2d 185.

We conclude that genuine issues of material fact were raised by the pleadings and affidavits and that the court erred in granting summary judgment for plaintiff.

Defendant also contends that she was denied a fair hearing because the judge displayed prejudice against her and failed to protect her constitutional rights. A reading of the record does not support defendant's allegations. Rather, the record indicates that the judge was patient with defendant and he allowed her an opportunity to present her case. Defendant contends that since she was appearing pro se, she should have been granted more leeway than is granted attorneys who appear before the court. It has been held in criminal cases that once a defendant chooses to waive counsel and represent himself, he is responsible for conducting his own defense (*People* v. *Rich-*

ardson (1959), 17 Ill.2d 253, 260, 161 N.E.2d 268) and he may not expect favored treatment even though the result may be that he is less effective as his own attorney (*People* v. *Tuczynski* (1st Dist. 1978), 62 Ill. App.3d 644, 650, 378 N.E.2d 1200). This same principle should apply in civil cases.

Based on the foregoing we reverse the order of the circuit court of Cook County and remand the cause for further proceedings not inconsistent with this opinion.

Reversed and remanded.

Stamos, P.J., and Downing, J., concur.

APPENDIX G

In The

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Municipal Department, First District

HARVEY,

Plaintiff,

v.

BARD, et al.,

Defendants.

No. 80 L 14172

ORDER

This cause coming on for hearing on the Motion of Defendants to Dismiss the Complaint, previously set for hearing by Order of December 3, 1980, and on Plaintiffs' Motion for Change of Venue, filed and served on counsel at approximately 2:30 p.m., January 8, 1981, the Court hearing arguments of counsel and Mrs. Harvey only on Plaintiff's Motion in Change of Venue, and being fully advised in the premises,

IT IS HEREBY ORDERED

1) That Plaintiffs Motion for Change of Venue is denied,

2) That Defendants Motion to Dismiss originally set for hearing at 2:30 p.m. today, January 8, 1981, is continued to March 2, 1981, at 2:20 p.m. without further notice,

3) That Plaintiff has until February 5, 1981, to file any further response to Defendants' Motion to Dismiss, and

4) That Defendant's have until February 26, 1981, to file any response in support of this Motion to Dismiss.

Enter:

/s/ Judge Paul F. Elward

Jan. 8, 1981

APPENDIX H

In The

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Municipal Department, First District

ROBERT E. BARD,

Plaintiff,

v.

BETTY SANDER HARVEY, a/k/a
MRS E. HOWARD HARVEY,

Defendant.

Entered In Special Order Book Page 74

No. 77 M1-109422

ORDER

Filed Oct 8, 1980

This day this case came on to be heard on the post-trial motion by plaintiff for judgment notwithstanding the verdict, or, in the alternative, for a new trial, and the court, after considering the briefs submitted by the parties, defendant's affidavit, the oral arguments of both parties, and after reviewing the testimony and the exhibits received in evidence at the trial, does find that plaintiff proved his case by a preponderance of the evidence and that no evidence of any probative value was offered by the defendant to deny or refute his claim. Accordingly, the motion by plaintiff for judgment notwithstanding the verdict is granted and judgment is entered for the plaintiff and against the defendant for $925.00 with interest from September 15, 1976, and his costs of suit.

The court further orders that in the event that its ruling in this case is reversed on appeal, this court orders that a new trial be granted for the reason that the defendant was guilty of repeated misconduct committed in the presence of the jury which was prejudicial to a fair trial on the issues and for the further reason that the verdict of the jury was against the manifest weight of the evidence and against the preponderance of the evidence.

Enter:

/s/ Morgan M. Finley
Judge

MINOR K. WILSON
Attorney for Plaintiff
135 S. LaSalle - Suite 2020
Chicago, Illinois
(312) 332-3933

Supreme Court, U.S.
FILED
JAN 3 1983
ALEXANDER L. STEVAS
CLERK

No. 82-911

In the

Supreme Court of the United States

OCTOBER TERM, 1982

BETTY SANDER HARVEY,

Petitioner,

vs.

ROBERT E. BARD,

Respondent.

BETTY SANDER HARVEY,

Petitioner,

vs.

ROBERT E. BARD and BATES, DEPREE, BARD & WILSON,

Respondents.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DAVID W. ANDICH
ROAN & GROSSMAN
55 West Monroe Street
Suite 800
Chicago, Illinois 60603
(312) 263-3600
(*Counsel of Record for Respondents*)

MINOR K. WILSON
135 South LaSalle Street
Suite 2020
Chicago, Illinois 60603
(312) 332-3933

M. MARSHALL SEEDER
ROAN & GROSSMAN
55 West Monroe Street
Suite 800
Chicago, Illinois 60603
(312) 263-3600

The Scheffer Press, Inc.—(312) 263-6850

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1982

No. 82-911

BETTY SANDER HARVEY,

Petitioner,

vs.

ROBERT E. BARD,

Respondent.

BETTY SANDER HARVEY,

Petitioner,

vs.

ROBERT E. BARD and BATES, DEPREE, BARD & WILSON,

Respondents.

On Petition For Writ Of Certiorari To The Appellate Court Of Illinois

---

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASES

Although Petitioner's statement of the cases is insufficient and argumentative, the facts underlying the two cases are completely set forth in the respective orders of the Appellate Court of Illinois, copies of which are annexed to the Petition for Writ of Certiorari as Appendices A and C, and need not be restated here. One important fact does, however, require clarification. Petitioner's five-count legal malpractice and two-count breach of contract claim against Respondents Robert E. Bard and Bates, DePree, Bard & Wilson, *Harvey* v. *Bard, et al.*, No. 80 L 14172, Appellate Court No. 81-781, was not, as Petitioner contends, subjected to a directed verdict by the trial court. Petition for Writ of Certiorari, p. 5.

Rather, that action was properly dismissed by the trial court upon Respondents' motion pursuant to then section 48(d) of the Illinois Civil Practice Act, Ill.Rev.Stat. ch. 110 §48(d), now section 2-619(d) of the Illinois Code of Civil Procedure, Ill.Rev.Stat. ch. 110 §2-619(d). That section provides that an action may be involuntarily dismissed when the cause of action is barred by a prior judgment. It was the dismissal of the legal malpractice action, as affirmed by the Appellate Court of Illinois and refused review by the Supreme Court of Illinois that is, in part, the subject of this Petition.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari should be denied as to both cases because it presents no substantial federal question as to either case and because the decisions below rest on adequate and independent state law grounds.

ARGUMENT

Both cases that form the basis of this matter arose out of the legal representation of Petitioner by Respondent Bard. In *Bard* v. *Harvey,* 77 M1 109422, Appellate Court No. 80-2773, (hereinafter the "fees case"), Respondent Bard sued Petitioner for unpaid legal fees. After a jury trial, Respondent Bard was awarded judgment notwithstanding the verdict. In the subsequently filed case of *Harvey* v. *Bard, et al.* (hereinafter the "legal malpractice case"), Petitioner sued for legal malpractice and breach of contract. Her lawsuit was dismissed under the doctrine of *res judicata,* all issues regarding Respondent's legal representation of Petitioner having been adjudicated in the fees case.

The Illinois Appellate Court affirmed both the judgment notwithstanding the verdict in the fees case and the dismissal of the legal malpractice action without even addressing any of the purported federal questions raised by Petitioner regarding Seventh Amendment protections of the right to trial by jury, due process or equal protection. That Court correctly understood that the issues raised in both the fees case and the legal malpractice case were governed solely by well-established Illinois law, *see Paul* v. *Davis,* 424 U.S. 693 (1976), and that Petitioner's attempts to frame constitutional questions were meritless, if not frivolous. Indeed, the Appellate Court of Illinois found Petitioner's appeals in both actions so wholly unremarkable and without merit that it disposed of both appeals by unpublished orders pursuant to Illinois Supreme Court Rule 23, Ill.Rev.Stat. ch. 110A §23.

Petitioner now presents no substantial federal question nor does she demonstrate that the decisions below were not based on adequate interpretations of state law by state courts, independent of federal constitutional concerns. *Fox Film Corp.* v. *Muller,* 296 U.S. 207, 210 (1935); *see also Murdock* v. *City of Memphis,* 87 U.S. 590, 629 (1875) ("merely *raising*" federal question is insufficient) (emphasis in original). It is, of course, settled beyond dispute that neither a judgment notwithstanding the verdict nor a dismissal of a lawsuit violates any constitutional principle. *See Pedrick* v. *Peoria & Eastern Railroad Co.,* 37 Ill.2d 494, 229 N.E.2d 504 (1967); *Galloway* v. *United States,* 319 U.S. 372 (1943); *Bauscher* v. *City of Freeport,* 103 Ill.App.2d 372, 243 N.E.2d 650 (1968) (dismissal of a lawsuit does not violate constitutional principles); *see also Parklane Hosiery Co., Inc.* v. *Shore,* 439 U.S. 322 (1979) (principle of collateral estoppel does not offend Seventh Amendment).

In short, the Petition satisfies *none* of the standards of Supreme Court Rule 17 for the granting of a writ of certiorari to review a state court judgment. The Illinois courts have not decided a federal question in a way which conflicts with the decision of another state or federal court. Nor have these courts decided an important question of federal law which has not been, but should be, settled by this Court.

Moreover, it is a long-established principle that this Court will not review the decision of a state court which presents no substantial federal question. *Rice* v. *Sioux City Memorial Park Cemetery,* 349 U.S. 70 (1955); *Zucht* v. *King,* 260 U.S. 174 (1922); *Millingar* v. *Hartupee,* 73 U.S. (6 Wall.) 258 (1867). It is equally well settled that

the bare assertion of a constitutional claim utterly without foundation, or one so clearly and conclusively settled by prior decisions of this Court so as to admit of no further argument, presents no substantial federal question. *Equitable Life Assurance Society* v. *Brown,* 187 U.S. 308, 314 (1902). Petitioner's assertion here that constitutional questions are raised by the actions of the Illinois courts is groundless and unsupportable, being merely an attempt to seek this Court's review of questions of state law. *See Abbott* v. *National Bank of Commerce,* 175 U.S. 409 (1899), where this Court declared that the dismissal of a libel action on grounds of privilege raised no Fourteenth Amendment issue. *See also Boddie* v. *Connecticut,* 401 U.S. 381, 378 (1971) (no deprivation of due process to enter default judgment for failure to appear or failure to comply with procedural rules).

In essence, Petitioner makes the bare assertion that the decisions of the Appellate Court are erroneous in their application of Illinois law and, therefore, deprive her of her constitutional rights. But Illinois law is both well-settled and clear, and the decisions of the Appellate Court in these cases were correct. *See Howell* v. *Goodrich,* 69 Ill. 556 (1873). Under these circumstances, review by this Court is plainly unwarranted.

CONCLUSION

The Petitioner suggests no valid reason why this Court should review either the judgment notwithstanding the verdict entered against her in the fees case or the dismissal of her legal malpractice case. Petitioner's status

as an aggrieved litigant whose claim has been rejected on the basis of settled legal rules is no different than that of numerous other disappointed suitors. Petitioner's unfounded assertions of error by the Appellate Court of Illinois do not suffice to invoke this Court's jurisdiction or to impose yet another round of appellate review upon these Respondents. The Supreme Court of Illinois did not accept Petitioner's appeals. This Court should similarly refuse Petitioner's request for review. The well considered decisions of the Appellate Court of Illinois should be allowed to stand as the final disposition of this action. For all of the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

David W. Andich
Roan & Grossman
55 West Monroe Street
Suite 800
Chicago, Illinois 60603
(312) 263-3600
(Counsel of Record for Respondents)

Minor K. Wilson
135 South LaSalle Street
Suite 2020
Chicago, Illinois 60603
(312) 332-3933

M. Marshall Seeder
Roan & Grossman
55 West Monroe Street
Suite 800
Chicago, Illinois 60603
(312) 263-3600